

In re) Fair Hearing No. 9535
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Appeal of)

The petitioner appeals the decision by the Department of Social Welfare closing her ANFC grant due to her receipt of a lump-sum inheritance. The issue is whether portions of the inheritance were unavailable to the petitioner for reasons beyond her control within the meaning of the pertinent regulations.

On November 6, 1989, the petitioner received an inheritance of \$4,411.03.¹ On that day she went to the bank where the money was deposited and issued checks to several individuals to whom she owed money. Of these, the department concedes that \$2,000 was for past due bills that constituted "necessities"--thereby rendering this amount "unavailable" to the petitioner "for reasons beyond her control" (see infra). However, the department found the petitioner ineligible for ANFC for the period of time (months) determined by dividing the petitioner's ANFC "standard of need" into the remaining amount of the lump-sum(\$2,411.03), which the department determined was not "unavailable" to the petitioner within the meaning of the regulations (infra).

Of this amount, the petitioner, on the day she received her inheritance, wrote checks of \$1,000 to her grandfather and \$1,400 to her grandmother.² The petitioner testified that she owed her grandfather \$1,000 after he had loaned her that amount to move into another apartment in July, 1989. The loan was documented in a handwritten agreement, dated July 12, 1989, signed by the petitioner, in which she agreed to pay back her grandfather \$1,000 "when I become of age 21 years from monies left me by me grandmother . . . upon my 21st birthday November 6, 1989." On November 8, 1989, on the same document, the petitioner's grandfather acknowledged that the loan was "paid in full."

The petitioner also testified that the \$1,400 she paid her other grandmother was to repay her for the purchase of a used car for the petitioner in March, 1989, and for subsequent repairs to that car. The petitioner stated she needed a car primarily to make sure she could get her chronically ill infant son to doctor's appointments. She also stated that her grandmother needed the money back because of her own medical expenses and for pre-paid burial arrangements.

However, the petitioner presented no evidence and made no allegation that if she did not repay either of her grandparents she would lose, or risk losing, any basic necessity for herself or her children.

ORDER

The department's decision is affirmed.

REASONS

Ordinarily, when an individual receives a lump-sum payment her household becomes ineligible for ANFC for the number of months obtained by dividing the household's monthly "standard of need" (which is set by regulations--see W.A.M. § 2245.2) into the total amount of the lump-sum. W.A.M. § 2250.1. However, the same regulation allows the department to "offset" amounts against the lump-sum in the following three instances:

- 1) An event occurs which, had the family been receiving assistance, would have changed the amount paid;
- 2) The income received has become unavailable to the family for reasons beyond their control;
- 3) The family incurs and pays for medical expenses which offset the lump-sum income.

In Fair Hearing Nos. 6891, 8608, 9072, and 9273, the Board has examined the requirements of the above "offset" provisions. In those cases it held that subparagraph 2 of § 2250.1 (supra), the only one at issue both here and in the above cited Fair Hearings, establishes a two-part test: 1) unavailability, and 2) due to circumstances beyond the control of the family. Regarding the first part of the test, the Board ruled that payments by an individual from a lump-sum to satisfy pre-existing legal obligations rendered that portion of the lump-sum "unavailable" to the individual within the meaning of § 2250.1(2) (supra).

Regarding the second part of the test (i.e., whether

the unavailability was "beyond the control of the family"), the Board in those Fair Hearings held the determining factor to be "whether or not it was necessary to the petitioner to incur and pay for these bills". In the instant case, as in Fair Hearings No. 8608 and 9072, regardless of whether the first test is met,³ the evidence does not establish that the petitioner faced any risk whatsoever of losing either her housing or her car (or any other "necessity") if she did not repay either her grandfather or grandmother the money she had received from them for these purposes. Since it cannot be found that it was "necessary" for the petitioner to repay this money, it cannot be concluded that these amounts of the lump-sum inheritance were "unavailable" to the petitioner "for reasons beyond her control." See Fair Hearing Nos. 8608 and 9072.

While there may have been strong moral reasons for the petitioner to repay her relatives, it cannot be concluded that these considerations rise to the level of "necessity" that has been held by the board to come within the contemplation of the "offset" provisions of W.A.M. § 2250.1(2). The case is thus distinguished from Fair Hearing No. 6891 (in which it was found that the petitioner therein was at substantial risk of losing necessary transportation if she did not pay a past due repair bill from her garage). Therefore, the department's decision is affirmed.

FOOTNOTES

¹The money had been held in trust until the petitioner reached her 21st birthday, which was November 6, 1989.

²The petitioner kept the remaining \$11.03.

³It would be difficult to conclude that the petitioner's grandmother's "loan" created a "legal obligation" on the part of the petitioner to repay her.

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